

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BRUHN NEWTECH, INC., *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

No. 16-783 C

Senior Judge Marian Blank Horn

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S "MOTION FOR A STAY OF THE
CASE IN LIGHT OF LAPSE OF APPROPRIATIONS"**

COME NOW Plaintiffs Bruhn NewTech, Inc. (BNT-US) and Plaintiff Bruhn NewTech, A/S (BNT-Denmark), by and through their attorneys Steven J. Lewicky, Esq. and the law firm of Lewicky, O'Connor, Hunt & Meiser, LLC, and oppose the Government's "Motion for a Stay of the Case in Light of Lapse of Appropriations," to the extent such stay would delay the scheduled commencement of trial.

1. Defendant the United States filed the present motion on December 26, 2018 (ECF 103), shortly after appropriations for the Department of Justice lapsed.

2. As stated within the Government's motion, Plaintiffs do not oppose staying the case during the lapse in appropriations, as long as any such stay does not delay the commencement of trial. Pursuant to the Court's Order of August 14, 2018 (ECF-88), trial is scheduled to commence on February 4, 2019, and the Court has reserved two weeks on its docket for the conduct of trial.

3. As of the date of filing this paper, appropriations for the Department of Justice have not yet been restored for the current time period. Upon information and belief, however, counsel for the Government has been able to continue preparing for trial during the lapse in

appropriations. Since December 21, 2018, in addition to the present motion, the Government has drafted and filed a Reply in support of its motion *in limine* seeking exclusion of portions of Plaintiffs' expert's testimony (ECF-104) and a Reply in support of its motion *in limine* to submit questions to the Copyright Office (ECF-105). The Government has prepared, issued and served at least two trial subpoenas, and has been in regular contact with undersigned counsel.

4. Plaintiffs appreciate that the lapse in appropriations for the Department of Justice may have created challenges for the Government, but a delay in the trial would put off the day of final resolution of this dispute, and would increase Plaintiffs' costs of litigation by requiring addition preparation for trial. One of Plaintiffs' primary witnesses is scheduled to undergo major surgery on February 25, 2019 (after the presently-scheduled conclusion of trial), and is thereafter expected to require an extended period for recovery.

WHEREFORE, Plaintiffs oppose any stay of proceedings that would result in a delay of the commencement of trial on February 4, 2019.

Respectfully submitted,

January 8, 2019

s/ Steven J. Lewicky
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